

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

|                    |   |                             |
|--------------------|---|-----------------------------|
| In re: David Stock | ) | Proceedings Under Chapter 7 |
|                    | ) |                             |
| Debtor             | ) | Case No. 09-15452           |
|                    | ) |                             |
|                    | ) | Judge Randolph Baxter       |

Motion for a Determination, Pursuant to §109(h)(4), that the Requirements of §§109(h)(1) and 727(a)(11) Do Not Apply with Respect to Mr. Stock

Mr. Stock, through counsel, hereby moves the Court, pursuant to 11 U.S.C. Sections 109(h)(4) and 727(a)(11), for a determination that the credit briefing requirements of § 109(h)(1), that a debtor receive within 180 days of the filing of his case the individual or group briefing; and the requirement under 727(a)(11), that a debtor complete an instructional course concerning personal financial management, do not apply with respect to him.

The determination is sought because, in the absence of that determination, Mr. Stock cannot be a debtor under this Chapter ((109(h)(1))), and cannot qualify for a discharge ((727(11))).

The standard to determine whether the requirements of §§109(h)(1) and 727(a)(11) apply is set forth in 109(h)(4), which provides as follows:

(4) The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, "incapacity" means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

Section 727(a)(11) incorporates the standard of §109(h)(4) as follows: “except that this paragraph shall not apply with respect to a debtor who is a person described in section 109(h)(4)...”.

Thus, the standard for the determination that the requirements of §§109(h)(1) and 727(11) do not apply to Mr. Stock is the same standard, which standard is set forth in §109(h)(4).

Mr. Stock meets both prongs of the standard of 109(h)(4) because he is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and he is unable, after reasonable effort, to participate in an in-person, telephone, or Internet briefing.

Mr. Stock currently resides at a Nursing Home. Mr. Stock made an effort to complete the credit counseling, however, he was unable to recall basic personal information such as his age and Social Security Number. The counselor who attempted the § 109(1) credit briefing could not go forward with it because of Mr. Stock's inability to participate. (See Exhibit A). Because of his mental deficiencies regarding basic information, Mr. Stock is incapable of “realizing and making rational decisions with respect to his financial responsibilities.”

This information is also confirmed through a letter from Mr. Stock's doctor, attached hereto as Exhibit B.

Wherefore, Mr. Stock, having established that he meets the standard for a determination that the requirements of 109(h)(1) and §727(11) do not apply to him, respectfully requests that the Court so rule, thus ordering that he can be a debtor under

this Chapter and that the failure to comply with §727(11) will not be an impediment to receipt of his discharge.

Respectfully submitted,

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Certificate of Service

On this 16<sup>th</sup> day of June 2009, a copy of the foregoing notice of amended schedules was served upon the following pursuant to the court's electronic case filing system:

**ECF:**

Susan M. Gray, ecf@smgraylaw.com;

Chapter 7 Trustee

United States Trustee

**Regular Mail:**

No Service by Regular U.S. Mail

/s/ Susan M. Gray

**SUSAN M. GRAY**

Counsel for Mr. Stock